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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
MSC 02 243 61614

Office: LOS ANGELES

Date: NOV 04 2009

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554. 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application for permanent resident status pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000), based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he had a felony conviction in the state of California. *See Section 1104(c)(2)(D)(ii) of the LIFE Act.* Specifically, the director noted that the applicant had a felony conviction for possession of a controlled substance and was consequently inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(2)(A)(i)(II).

In adjudicating the appeal of the denial of the applicant's Form I-485, the AAO found that the applicant's felony conviction for possession of a controlled substance was not a conviction for immigration purposes, and that the applicant had one misdemeanor firearms conviction. The AAO sent the applicant a notice of intent to deny (NOID) requesting final court dispositions regarding other criminal charges contained in the record before the AAO. Specifically, the AAO requested evidence resolving two misdemeanor charges for failure to appear at court ordered hearings in 1987. The applicant responded to the NOID by submissions dated July 29, 2009 and August 10, 2009, including in his response the California criminal history record identified with the applicant's fingerprints, affidavits from friends, and correspondence from the courts. The AAO is satisfied that the applicant does not have two additional misdemeanor convictions for failure to appear, and that he is not inadmissible on criminal grounds.

The AAO also found deficiencies in the evidence regarding the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period. The AAO sent the applicant a second NOID to provide the applicant with an opportunity to submit additional evidence regarding his eligibility for adjustment to permanent residence under the LIFE Act. The applicant failed to respond to the second NOID.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

To establish that he continuously resided in the United States during the requisite period, the applicant submitted two letters of employment indicating his employment from 1985 – July 1987; copies of pay stubs from one of the employers dated in 1987; a copy of a California driver’s license issued in 1987; affidavits from friends; and copies of rent receipts dated in 1981 and 1982. Evidence of residence outside the requisite period is not relevant and will not be considered.

The evidence of record establishes that the applicant resided in the United States during some part of 1987.

On the Form I-687, the applicant indicated that he resided at [REDACTED] throughout the requisite period. The rental receipts dated in 1981-1982 are not accompanied by lease agreements, utility bills, or other contemporaneous evidence of the applicant’s residence, or testamentary evidence from the landlord. The applicant has not submitted evidence to verify his attestations of residence.

The Form I-687 lists no employment history from 1981-1984, and from August 1987 – May 1988. The Form I-687 lists no residence in the United States from July 1987 – October 1989. The applicant failed to submit additional evidence of continuous residence concerning these periods.

The employment letters from the Supreme Fish Company attesting to the applicant's employment from 1985-1986 and from the Raymor Electric Company¹ attesting to the applicant's employment from June 1986 to July 1987 are deficient. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As these letters do not conform to the requirements, they may be accorded nominal weight as evidence of the applicant's continuous residence in the United States from 1985 – July 1987.

The affidavit of [REDACTED] testifies to the applicant's departure from the United States from July – August 1987. The affidavit of [REDACTED] is not sufficiently detailed to establish the truth of its assertions. [REDACTED] does not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the witness statement of [REDACTED] has little probative value.

The applicant also submitted declarations from [REDACTED] and [REDACTED], both of whom indicate that they have known the applicant since 1981. Neither of the affiants indicate where the applicant lived from 1981-1986. Both of them indicate that in 1987, the applicant was new to the United States. This evidence is inconsistent with the applicant's assertion that he continuously resided in the United States since 1981. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above detract from

¹ The copies of the pay stubs from [REDACTED] indicated.

establish the applicant's employment on the dates

the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

The applicant failed to submit sufficient credible documentation to meet his burden of establishing by a preponderance of the evidence that he resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.